

ROBERT D. CRAIGE
Claimant

SHEARER SIDING & HOME REMODELING
Respondent

KANSAS BUILDING INDUSTRY WC FD
Insurance Carrier

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ORDER

ISSUES

Neither of the parties filed briefs as requested in this matter. Therefore, the Appeals Board does not have the benefit of either of the parties' arguments or contentions.

After reviewing the preliminary hearing record, the Appeals Board finds the Administrative Law Judge's preliminary hearing Order Denying Compensation should be affirmed.

On or about October 20, 1999, claimant alleges he injured his left knee as he stepped from a ladder into a window of a house while working for the respondent. At the time of the accident, claimant had been employed by the respondent as a general laborer since September 28, 1999. Respondent is in the business of siding and remodeling homes.

Claimant testified he notified his immediate supervisor, Edgar K. Eldridge, that he injured his left knee within minutes after the accident. Claimant also testified that three days later he notified the respondent's owner, Dale Shearer, of the accident and the resulting left knee injury. The respondent did not provide claimant with medical treatment for the injury. In fact, claimant testified both Mr. Eldridge and Mr. Shearer told claimant, if he filed a workers compensation claim in reference to the alleged injury, he would be fired.

Although his left knee remained symptomatic, claimant continued to work for the respondent. Claimant bought a brace to wear while he worked. Finally, the claimant sought medical treatment on his own.

Claimant saw Joel E. Hornung, M.D. of Council Grove, Kansas, on November 22, 1999. Dr. Hornung had previously seen the claimant in 1991 for personal health problems. Dr. Hornung's medical records were admitted into the preliminary hearing record. The claimant gave Dr. Hornung a history of injuring his left knee six weeks before as he stepped up on a curb downtown. Dr. Hornung's impression was probable ACL tear. Dr. Hornung then referred claimant to an orthopedic surgeon in Manhattan, Kansas for consultation. Claimant was not seen by the orthopedic surgeon because claimant had to either pay cash for the appointment or have some type of insurance coverage.

Dr. Hornung's medical records also indicate that claimant returned for treatment concerning other personal medical problems through April 12, 2000. But Dr. Hornung's medical records contain no further complaints by claimant concerning any pain or discomfort in his left knee. Claimant testified he did not provide Dr. Hornung a history he injured his left knee at work because he was afraid the respondent would terminate his employment when it found out he was making a workers compensation claim.

Claimant's last day worked for the respondent was March 23, 2000. Claimant testified the respondent fired him for reasons not associated with his employment. At the time the claimant testified at the preliminary hearing on July 19, 2000, claimant had not worked anywhere since his termination.

Both claimant's supervisor, Edgar K. Eldridge, and respondent's owner, Dale Shearer, testified in person before the Administrative Law Judge. Both denied that claimant notified them he injured his left knee at work on October 20, 1999. Both testified they knew claimant wore a left knee brace at work. But Mr. Shearer specifically testified that claimant wore the knee brace before October 20, 1999, the alleged date of accident.

Both also denied that they told claimant he would be terminated if he filed a workers compensation claim.

Mr. Shearer is not only the respondent's owner but also was claimant's landlord. Mr. Shearer evicted claimant for nonpayment of rent and nonpayment of utility bills. Mr. Shearer testified the eviction took place around April 1, 2000, shortly after claimant was considered as voluntary quit when he failed to return to work after his last day worked of March 23, 2000. Mr. Shearer also testified that on or about March 23, 2000, he caught the claimant sleeping with his ex-wife, Cindy Bird, who, at that time, was still living on occasion with Mr. Shearer.

Cindy Bird, Mr. Shearer's ex-wife and who is currently residing with claimant, also testified in this matter. Ms. Bird testified that while she was still living with Mr. Shearer in October of 2000, she had a discussion with Mr. Shearer about the claimant injuring his left knee at work. Mr. Shearer told Ms. Bird that he had told supervisor Mr. Eldridge to tell claimant, if he filed a workers compensation claim, he would be terminated.

In the July 24, 2000, Order Denying Compensation, the Administrative Law Judge denied claimant's request for workers compensation benefits and made a specific finding, "The Court does not find that any witness was especially credible," As noted above, there is conflicting testimony from the witnesses that testified in person before the Administrative Law Judge. In finding claimant failed to prove that he suffered a work-related accidental injury and did not give respondent timely notice of accident, the Administrative Law Judge simply did not believe claimant's testimony and the testimony of claimant's live-in girlfriend and ex-wife of respondent's owner, Mr. Shearer, Cindy Bird. Also damaging to the claimant's credibility is the history he gave Dr. Hornung contained in the medical note of November 22, 1999. In that note, he gives Dr. Hornung a history that he injured his knee stepping up on a curb downtown.

The Appeals Board finds some deference should be given to the Administrative Law Judge's conclusions as he had the opportunity to assess the witnesses' credibility. The Appeals Board, therefore, affirms the Administrative Law Judge's conclusion that claimant failed to prove he suffered a work-related accidental injury and further failed to prove that he provided respondent with timely notice of accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's July 24, 2000, preliminary hearing Order Denying Compensation should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: James B. Biggs, Topeka, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director